



January 30, 2002

SENATE BILL No. 417

DIGEST OF SB 417 (Updated January 28, 2002 3:34 PM - DI 77)

Citations Affected: IC 14-8; IC 14-25.5.

Synopsis: Division of water enforcement procedures. Provides for administrative enforcement for violations under the jurisdiction of the division of water of the department of natural resources. Sets limits on the amounts of civil penalties that may be assessed for violations. Provides that certain violations are infractions.

Effective: July 1, 2002.

Wheeler, Lewis

January 10, 2002, read first time and referred to Committee on Natural Resources.
January 29, 2002, amended, reported favorably — Do Pass.

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SB 417—LS 7288/DI 71+



January 30, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 417

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-77 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 77. "Division" has the
3 following meaning:

4 (1) For purposes of IC 14-9-8, the meaning set forth in
5 IC 14-9-8-2.

6 (2) For purposes of IC 14-20-1, the meaning set forth in
7 IC 14-20-1-2.

8 (3) For purposes of IC 14-21-1, the meaning set forth in
9 IC 14-21-1-6.

10 (4) For purposes of IC 14-22, the division of fish and wildlife.

11 (5) For purposes of IC 14-24, the division of entomology and
12 plant pathology.

13 (6) **For purposes of IC 14-25.5, the division of water.**

14 (7) For purposes of IC 14-31-2, the meaning set forth in
15 IC 14-31-2-4.

16 (7) **(8)** For purposes of IC 14-37, the division of oil and gas.

17 SECTION 2. IC 14-8-2-107, AS AMENDED BY P.L.160-1999,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2002]: Sec. 107. "Fund" has the following meaning:

(1) For purposes of IC 14-9-5, the meaning set forth in
IC 14-9-5-1.

(2) For purposes of IC 14-9-8-21, the meaning set forth in
IC 14-9-8-21.

(3) For purposes of IC 14-9-9, the meaning set forth in
IC 14-9-9-3.

(4) For purposes of IC 14-12-1, the meaning set forth in
IC 14-12-1-1.

(5) For purposes of IC 14-12-2, the meaning set forth in
IC 14-12-2-2.

(6) For purposes of IC 14-12-3, the meaning set forth in
IC 14-12-3-2.

(7) For purposes of IC 14-13-1, the meaning set forth in
IC 14-13-1-2.

(8) For purposes of IC 14-13-2, the meaning set forth in
IC 14-13-2-3.

(9) For purposes of IC 14-19-4, the meaning set forth in
IC 14-19-4-1.

(10) For purposes of IC 14-19-5, the meaning set forth in
IC 14-19-5-1.

(11) For purposes of IC 14-20-1, the meaning set forth in
IC 14-20-1-3.

(12) For purposes of IC 14-20-11, the meaning set forth in
IC 14-20-11-2.

(13) For purposes of IC 14-22-3, the meaning set forth in
IC 14-22-3-1.

(14) For purposes of IC 14-22-4, the meaning set forth in
IC 14-22-4-1.

(15) For purposes of IC 14-22-5, the meaning set forth in
IC 14-22-5-1.

(16) For purposes of IC 14-22-8, the meaning set forth in
IC 14-22-8-1.

(17) For purposes of IC 14-22-34, the meaning set forth in
IC 14-22-34-2.

(18) For purposes of IC 14-23-3, the meaning set forth in
IC 14-23-3-1.

(19) For purposes of IC 14-23-8, the meaning set forth in
IC 14-23-8-1.

(20) For purposes of IC 14-25-2-4, the meaning set forth in
IC 14-25-2-4.



(21) For purposes of IC 14-25-10, the meaning set forth in IC 14-25-10-1.

(22) For purposes of IC 14-25-11-19, the meaning set forth in IC 14-25-11-19.

(23) For purposes of IC 14-25.5, the meaning set forth in IC 14-25.5-1-3.

~~(23)~~ (24) For purposes of IC 14-28-5, the meaning set forth in IC 14-28-5-2.

~~(24)~~ (25) For purposes of IC 14-31-2, the meaning set forth in IC 14-31-2-5.

~~(25)~~ (26) For purposes of IC 14-25-12, the meaning set forth in IC 14-25-12-1.

~~(26)~~ (27) For purposes of IC 14-33-14, the meaning set forth in IC 14-33-14-3.

~~(27)~~ (28) For purposes of IC 14-33-21, the meaning set forth in IC 14-33-21-1.

~~(28)~~ (29) For purposes of IC 14-34-6-15, the meaning set forth in IC 14-34-6-15.

~~(29)~~ (30) For purposes of IC 14-34-14, the meaning set forth in IC 14-34-14-1.

~~(30)~~ (31) For purposes of IC 14-37-10, the meaning set forth in IC 14-37-10-1.

SECTION 3. IC 14-25.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

ARTICLE 25.5. ENFORCEMENT ACTIONS BY THE DIVISION OF WATER

Chapter 1. Applicability and Definitions

Sec. 1. This article applies to actions to enforce the following articles:

(1) IC 14-26.

(2) IC 14-27.

(3) IC 14-28.

(4) IC 14-29.

Sec. 2. As used in this article, "division" refers to the division of water of the department.

Sec. 3. As used in this article, "fund" means the water environmental fund established by IC 14-25.5-3-1.

Chapter 2. Enforcement

Sec. 1. A division inspector or a person authorized by the department may at any reasonable time enter upon public or private property to determine if there is a violation of:



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(1) an article listed in IC 14-25.5-1-1; or

(2) a rule adopted under an article listed in IC 14-25.5-1-1.

Sec. 2. The department may issue a written notice of violation if a person violates:

(1) an article listed in IC 14-25.5-1-1; or

(2) a rule adopted under an article listed in IC 14-25.5-1-1.

Sec. 3. A notice of violation issued under this chapter must include the following:

(1) The nature of the violation.

(2) The action that is appropriate to mitigate the violation.

(3) The date by which the violation must be mitigated.

(4) The procedure to obtain administrative review if a person is aggrieved by the issuance of the notice of violation.

Sec. 4. A notice of violation issued under this chapter is governed by IC 4-21.5-3-6.

Sec. 5. A notice of violation issued under this chapter becomes effective without a proceeding under IC 4-21.5-3 unless a person requests administrative review under IC 4-21.5-3-6 within thirty (30) days after receipt of the notice.

Sec. 6. A person who fails to mitigate a violation within the time set forth in a notice of violation is liable for:

(1) a civil penalty;

(2) permit revocation; or

(3) the sanctions under both subdivisions (1) and (2);

under IC 14-25.5-4.

Chapter 3. Water Environmental Fund

Sec. 1. The water environmental fund is established. The department shall administer the fund.

Sec. 2. The fund consists of the following:

(1) Accrued interest and other investment earnings of the fund.

(2) Civil penalties collected under IC 14-25.5-4.

(3) Gifts, grants, donations, or appropriations from any source.

Sec. 3. (a) Except as provided in subsection (d), money in the fund does not revert to the state general fund at the end of a fiscal year.

(b) The total amount in the fund may not exceed one million dollars (\$1,000,000). Any money in the fund that exceeds one million dollars (\$1,000,000) reverts to the land and water resources fund established by IC 14-25-10-2.

(c) The treasurer of state shall invest the money in the fund not



1 currently needed to meet the obligations of the fund in the same
 2 manner as other public money may be invested. Interest that
 3 accrues from these investments shall be deposited in the fund.

4 (d) If the fund is abolished, all money in the fund reverts to the
 5 state general fund.

6 Sec. 4. (a) Money paid into the fund may be appropriated for the
 7 following purposes:

8 (1) To cover the costs of mitigating a violation of an article to
 9 which this article applies or rules adopted under an article to
 10 which this article applies.

11 (2) To cover the costs of:

12 (A) mitigating environmental damage; or

13 (B) protecting the public from harm;

14 caused by a violation of an article to which this article applies
 15 or a violation of rules adopted under an article to which this
 16 article applies.

17 (b) The division director may make expenditures from the fund
 18 for purposes described in subsection (a) without the prior approval
 19 of the budget agency or the governor. An expenditure under this
 20 subsection may not exceed fifty thousand dollars (\$50,000).

21 Sec. 5. (a) An expenditure made from the fund under this
 22 chapter does not release a responsible person from liability.

23 (b) The department may seek from a responsible person
 24 reimbursement for expenses incurred under this chapter.

25 Chapter 4. Penalties

26 Sec. 1. The department may revoke a permit issued under an
 27 article to which this article applies if the department finds any of
 28 the following:

29 (1) The permit was issued through fraud or
 30 misrepresentation.

31 (2) The person to whom the permit was issued has violated an
 32 article to which this article applies or has violated a rule
 33 adopted under an article to which this article applies.

34 (3) The information or conditions upon which a permit was
 35 issued have substantially changed since the permit was issued.

36 (4) The person to whom the permit was issued has received a
 37 notice of violation under this article and has failed to do at
 38 least one (1) of the following:

39 (A) Mitigate the violation within the time limit set forth
 40 within the notice.

41 (B) Secure from the division in writing an extension of time
 42 within which to mitigate the violation before the expiration

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of the time established for mitigation.

(C) Request a proceeding under IC 4-21.5-3-6 within:

(i) thirty (30) days after receipt of the notice; or

(ii) the time provided by the division for mitigation;

whichever is longer.

Sec. 2. (a) If a permit is revoked under this chapter, the department may do either or both of the following:

(1) Order the person to mitigate the violation.

(2) Mitigate the violation.

(b) The revocation of a permit under this chapter does not relieve the person to whom the permit relates of the responsibilities imposed by this article.

(c) If the department elects to mitigate under subsection (a)(2), the person to whom the permit relates remains liable for the costs of mitigating the violation.

Sec. 3. (a) The department may assess a civil penalty of not more than ten thousand dollars (\$10,000) for a violation of an article to which this article applies or a violation of a rule adopted under an article to which this article applies.

(b) Each day during which a violation continues may be considered a separate violation for purposes of assessing a civil penalty.

(c) The department may bring a civil action under section 5 of this chapter to recover a penalty under this section and to enjoin a person from continuing a violation.

Sec. 4. A civil penalty assessed under section 3 of this chapter is subject to IC 4-21.5-3-6 and becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review within thirty (30) days after receipt of the notice of assessment.

Sec. 5. The division director may request the attorney general to institute an action in an appropriate court for the following:

(1) The recovery of civil penalties owed under this chapter.

(2) To restrain a person from commencing to violate or continuing to violate any of the following:

(A) An article to which this article applies or a rule adopted under an article to which this article applies.

(B) An order of the department.

Sec. 6. A person who knowingly violates this article commits a Class B infraction. Each day a violation occurs is a separate infraction.

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SENATE MOTION

Mr. President: I move that Senator Lewis be added as second author
of Senate Bill 417.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Natural Resources, to which was referred Senate Bill No. 417, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 17, delete "IC 4-21.5-5" and insert "**IC 4-21.5-3**".

Page 6, line 40, delete "misdemeanor." and insert "**infraction.**".

Page 6, line 41, delete "offense." and insert "**infraction.**".

and when so amended that said bill do pass.

(Reference is to SB 417 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 6, Nays 1.

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